

(1903) 01 MAD CK 0010
In the Madras High Court

Patumma and Others

APPELLANT

Vs

Idivi Beari

RESPONDENT

Date of Decision : 20-01-1903

Acts Referred:

Citation : (1903) 13 MLJ 265

Judgement

1. We think that the view taken by the learned District Judge is erroneous. The application made by Pathumma to execute her decree was made to the proper Court and was made in accordance with law. The fact that the Court could not, by reason of the attachment of the decree, immediately execute it on Pathumma's application, does not render her application one not in accordance with law. All that Section 273 of the CPC requires is, that the Court receiving notice of attachment "" shall stay execution "" unless and until certain events take place, that is, it prevents the Court from proceeding with the execution until such events take place, but it does not render the decree permanently incapable of execution by the decree-holder, or destroy the decree-holder's interest in it. It merely delays the realisation of his interest in it. To hold otherwise would manifestly open a wide door to fraud by collusion between the judgment-debtor and persons attaching the decree with the object of preventing the decree-holder from realising his decree for more than three years and thus causing its execution to be barred by limitation.

2. Pathumma's application was, therefore, sufficient to keep the decree alive, and the present application, though made not by her, but by her attaching creditor, was made within three years of her application, and is therefore not barred by Article 179, Schedule 2 of the Limitation Act,

We set aside the order of the District Judge and restore the order of the Subordinate Judge with costs in this and in the lower appellate Court.